DLA PIPER LLP (US) LOS ANGELES

Defendant Six Continents Hotels, Inc. ("Six Continents") submits the following Evidentiary Objections to the Declaration of Randall A. Snyder filed by Plaintiffs in support of their Motion for Class Certification.

### MATERIAL OBJECTED TO BY **DEFENDANT:**

#### (Para. 7, Page 5, Lines 17-19)

"7. Furthermore, it is my expert opinion that, for the cellular telephone numbers derived, it is possible to determine whether each calling party's calling location was within or outside California."

### **REASON FOR OBJECTION:**

#### A. Lacks Qualifications. Fed. R. Evid. 702.

Mr. Snyder lacks the requisite qualifications to render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Declaration of Monica D. Scott ("Scott Decl.,"), Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones. Mr. Snyder admitted during his deposition that his experience lies in Telephone Consumer Protection Act ("TCPA") cases, which do not depend on caller location, not call recording cases, (Scott Decl., Ex. AA, Snyder Depo., 56:19-57:4), nor has Mr. Snyder actually ever opined or analyzed any of the factors relevant to ascertaining the class in *this* case, specifically, determine an individual's location at the time of a call based on two- and three-year old telephone records. (Scott Decl., Ex. AA, Snyder Depo., 26:1-4; 65:4-66:2). See Kumho Tire Co. v. Carmichael, 526 U.S. 137, 149 (1999) (stating than an expert must have "a reliable basis in the knowledge and experience of the

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1 2	MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
3		relevant discipline") (emphasis added); Heisler v.
4		Maxtor Corp., No. 5:06-cv-06634, 2011 WL
5		1496114, at *9 (N.D. Cal. Apr. 11, 2011) (finding
6		that plaintiffs did not meet their burden of showing
7		their expert was qualified under Rule 702 because
8		the proffered expert did not have the requisite
9		experience in, and knowledge of, the relevant
10		field.)
11		B. Lack of Foundation. Speculation. Fed. R.
12		Evid. 104; Fed. R. Evid. 602. Mr. Snyder's
13		opinion that "it is possible to determine whether
14		each party's calling location was within or outside
15		California" is pure speculation as Mr. Snyder has
16		never attempted to or previously done any such
17		type of analysis, (Scott Decl., Ex. AA, Snyder
18		Depo., 26:1-4), and his opinions that this can be
19		done here are solely based on an document of
20		unknown origin and veracity from four years ago
21		that Mr. Snyder has never taken the time to verify.
22		( <i>Id.</i> , Snyder Depo., 74:4-76:7.) <sup>1</sup>
23		C. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
24		declaration and subsequent deposition testimony
25		make clear that he has not actually attempted to
26		
27	Even if the Court is inclined to give document, the document indicates that the	we any credence to Mr. Snyder's testimony based on this e majority of call detail records/cell tower information

Even if the Court is inclined to give any credence to Mr. Snyder's testimony based on this document, the document indicates that the majority of call detail records/cell tower information for the Class Period in this case (*i.e.*, March 2011 through July 2012) would no longer be available. (Scott Decl., Ex. AA, Snyder Depo., 86: 6-18; 95:15-23.)

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1 2	MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
3		perform any of the analysis he proposes, rendering
4		any and all conclusions about what could possibly
5		be done here irrelevant. See, e.g., Scott Decl.,
6		Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
7		33:5-17; 35:18-25.
8	(Para. 8, Page 5, Lines 20-22)	A. Lacks Qualifications. Fed. R. Evid. 702.
9	"8. Based on my education,	Mr. Snyder lacks the requisite qualifications to
10	knowledge, experience, expertise and	render the opinions proffered. Mr. Snyder,
11	training, it is my expert opinion that the	although a self-admitted "professional expert
12	proposed members of the class in this case	witness," (Scott Decl., Ex. AA, Snyder Depo.,
13	can be definitively and clearly ascertained	63:4-11), is not an expert in anything other than
14	based solely on their telephone numbers."	distinguishing landline telephone numbers from
15		cellular telephone numbers. Mr. Snyder admitted
16		during his deposition that his experience lies in
17		TCPA cases, not call recording cases, (Scott Decl.,
18		Ex. AA, Snyder Depo., 56:19-57:4), nor has
19		Mr. Snyder actually ever opined or analyzed any of
20		the factors relevant to ascertaining the class in <i>this</i>
21		case, specifically, (1) identifying individuals (i.e.,
22		names/addresses) solely based on their phone
23		number, (Scott Decl., Ex. AA, Snyder Depo., 14:1-
24		18; 46:7-22; (2) determine an individual's
25		residency based solely on their phone number,
26		(Scott Decl., Ex. AA, Snyder Depo., 21:1-8),
27		(3) determine an individual's location at the time of
28		a call based on two- and three-year old telephone
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1	MATERIAL OBJECTED TO BY	DEAGON FOR OR VECTOR
2	DEFENDANT:	REASON FOR OBJECTION:
3		records, (Scott Decl., Ex. AA, Snyder Depo., 26:1-
4		4; 65:4-66:2); (4) determine whether a call was
5		routed to call centers operated by Six Continents,
6		(Scott Decl., Ex. AA, Snyder Depo., 28:4-29:9; 32:
7		11-22); (5) determine whether a call was recorded
8		"without notice," (Scott Decl., Ex. AA, Snyder
9		Depo., 33:3-17; 47:9-48:6); and (6) determine
10		whether an individual called Six Continents using a
11		cordless phone, (Scott Decl., Ex. AA, Snyder
12		Depo., 35:18-36:4; 95:24-96:4). See Kumho Tire
13		Co. v. Carmichael, 526 U.S. 137, 149 (1999)
14		(stating than an expert must have "a reliable basis
15		in the knowledge and experience of the <i>relevant</i>
16		discipline") (emphasis added); Heisler v. Maxtor
17		Corp., No. 5:06-cv-06634, 2011 WL 1496114, at
18		*9 (N.D. Cal. Apr. 11, 2011) (finding that plaintiffs
19		did not meet their burden of showing their expert
20		was qualified under Rule 702 because the proffered
21		expert did not have the requisite experience in, and
22		knowledge of, the relevant field.)
23		B. Lack of Foundation. Speculation. Fed. R.
24		Evid. 104; Fed. R. Evid. 602. Mr. Snyder's
25		opinion "that the proposed members of the class in
26		this case can be definitively and clearly ascertained
27		based solely on their telephone numbers" lacks
28		foundation and is complete speculation as
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MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
	Mr. Snyder admitted during his deposition that he
	had never even seen the proposed Class definition
	before jumping to this baseless conclusion. (Scott
	Decl., Ex. AA, Snyder Depo., 6:9-18.) This
	opinion further lacks foundation as Mr. Snyder has
	never attempted to or previously done any analysis
	to determine whether the proposed Class definition
	in this case is ascertainable. See, e.g., Scott Decl.,
	Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
	33:5-17; 35:18-25.
	C. Improper Legal Conclusion. Improper
	Opinion/Argument. Fed. R. Evid. 702; Fed. R.
	<b>Evid. 703.</b> Mr. Snyder's opinion that the proposed
	Class in this case is "ascertainable" is an improper
	legal conclusion. McPhail v. First Command Fin.
	Planning, Inc., 247 F.R.D. 598, 604-05 (S.D. Cal.
	2007) ("Where an expert report amounts to written
	advocacy akin to a supplemental brief, a motion to
	strike is appropriate because this evidence is not
	useful for class certification purposes") (citing
	Fisher v. Ciba Specialty Chems. Corp., 238 F.R.D.
	273, 281 (S.D. Ala. 2006)); First Am. Corp. ERISA
	Litig., No. SACV 07-01357, 2009 WL 928294, at
	*1 (C.D. Cal. Apr. 2, 2009) (same).
	D. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
	declaration and subsequent deposition testimony
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MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
	make clear that he has not actually attempted to
	perform any of the analysis he proposes, rendering
	any and all conclusions about what could possibly
	be done here irrelevant. See, e.g., Scott Decl.,
	Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
	33:5-17; 35:18-25.
(Para. 14, Page 8, Lines 11-15)	A. Lack of Foundation. Speculation. Fed. R.
"14. There exist several commercially	Evid. 104; Fed. R. Evid. 602. Mr. Snyder
available third-party information service	admitted during his deposition that he has never
companies that collect and maintain	used any "available third-party information service
telephone and subscriber data either on	company" to obtain subscriber address information.
behalf of the wireless carriers or for	(Scott Decl., Ex. AA, Snyder Depo., 107:10-
various other commercial information	109:15.) Nor has Mr. Snyder confirmed whether
purposes such as providing notice to class	any of these companies actually have such
members in class actions. These	information. (Id.)
companies lease and maintain access to	B. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
Neustar's number portability database."	declaration and subsequent deposition testimony
	make clear that he has not actually attempted to
	perform any of the analysis he proposes, rendering
	any and all conclusions about what could possibly
	be done here irrelevant. See, e.g., Scott Decl.,
	Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
	33:5-17; 35:18-25.
(Para. 15, Page 8, Lines 17-21)	A. Lack of Foundation. Speculation. Fed. R.
"15. I have a great deal of personal and	Evid. 104; Fed. R. Evid. 602. Mr. Snyder

1 2	MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
3	as third-party information service	used any "available third-party information service
4	companies including A.B. Data,	company" to obtain subscriber address information.
5	CompliancePoint (a subsidiary of	(Scott Decl., Ex. AA, Snyder Depo., 107:10-
6	PossibleNOW), and Contact Center	109:15.) Nor has Mr. Snyder confirmed whether
7	Compliance. All three are well-known	any of these companies actually have such
8	organizations that maintain and provide	information. ( <i>Id</i> .)
9	telephone number database services."	<b>B. Irrelevant. Fed. R. Evid. 402.</b> Mr. Snyder's
10		declaration and subsequent deposition testimony
11		make clear that he has not actually attempted to
12		perform any of the analysis he proposes, rendering
13		any and all conclusions about what could possibly
14		be done here irrelevant. See, e.g., Scott Decl.,
15		Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
16		33:5-17; 35:18-25.
17	(Para. 16, Page 8 Line 21 -	A. Lack of Foundation. Speculation. Fed. R.
18	Page 9 Lines 1-11)	Evid. 104; Fed. R. Evid. 602. Mr. Snyder
19	"16. A.B. Data, Ltd., CompliancePoint	admitted during his deposition that he has never
20	and Contact Center Compliance all	used any "available third-party information service
21	maintain a complete database, updated	company" to obtain subscriber address information.
22	daily, of all telephone numbers and related	(Scott Decl., Ex. AA, Snyder Depo., 107:10-
23	information used in North America. The	109:15.) Nor has Mr. Snyder confirmed whether
24	telephone number database is provided to	any of these companies actually have such
25	them by Neustar and provides information	information. ( <i>Id</i> .)
26	about each and every telephone number in	B. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
27	use in North America. That information	declaration and subsequent deposition testimony
28	includes whether the telephone number is	make clear that he has not actually attempted to

### 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 number data analysis in class action 21 lawsuits." 22 23 24 25 26 27

#### MATERIAL OBJECTED TO BY **DEFENDANT:**

being served by a wireline or cellular telecommunications carrier, the cellular carrier's name and the porting history of the telephone number. In fact, these companies can even reveal the status of a particular telephone number as of some given date in the past, regardless of whether the number ever was ported prior to or after that date. Cellular telephone numbers that never were ported are guaranteed always to have been cellular telephone numbers. Furthermore, the Neustar database is updated on a daily basis to ensure that both past and present telephone number data is always reliable and preserved. I have personally been involved in contracting with these organizations to provide telephone

#### **REASON FOR OBJECTION:**

perform any of the analysis he proposes, rendering any and all conclusions about what could possibly be done here irrelevant. See, e.g., Scott Decl., Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9; 33:5-17; 35:18-25.

(Para. 18, Page 10 Lines 4-19) "18. All cellular telecommunications carriers record, maintain and store detailed information about all of their

subscribers. That information includes

call detail records ("CDRs"). CDRs

A. Lack of Foundation. Speculation. Fed. R. **Evid. 104; Fed. R. Evid. 602.** Mr. Snyder admitted during his deposition that he has never performed such an analysis on two- and three-year old telephone records, as would be the case for the Class period here nor has he ever himself obtained

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# MATERIAL OBJECTED TO BY DEFENDANT:

include detailed information regarding each individual subscriber's telephone calls, including each mobile-originating call to a telephone number from the cellular subscriber and each individual mobile-terminating call from a telephone number to the cellular subscriber. Each line-item CDR represents an individual call and includes the telephone number of the calling party (i.e., the telephone number of the party originating the call), the telephone number of the called party (i.e., the telephone number of the party receiving the call), the date the call was made, the time the call was made, the length of the call, the switching system from where the call originated and the cell site serving the subscriber for the call. CDRs including this data, and potentially additional data if requested, can be obtained and produced by the wireless carriers via subpoena using only the cellular telephone number as the unique identifying piece of data that will serve as the information for a detailed call record

### REASON FOR OBJECTION:

such information from cellular carriers. (Scott Decl., Ex. AA, Snyder Depo., 26:1-4; 65:4-66:2).

**B.** Irrelevant. Fed. R. Evid. 402. Mr. Snyder's declaration and subsequent deposition testimony make clear that he has not actually attempted to perform any of the obtaining of information or analysis he proposes, rendering any and all conclusions about what could possibly be done here irrelevant. *See*, *e.g.*, Scott Decl., Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9; 33:5-17; 35:18-25.

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1 MATERIAL OBJECTED TO BY **REASON FOR OBJECTION: DEFENDANT:** 2 (Para. 19, Page 10 Line 18 -A. Lack of Foundation. Speculation. Fed. R. 3 Page 11, Line 4) Evid. 104; Fed. R. Evid. 602. Mr. Snyder 4 "19. The switching system from which admitted during his deposition that (1) he was "not 5 a mobile-originated call emanates and the sure" regarding the availability of cell site 6 information once CDR information is gone; and connected cell site are at static building 7 locations with geographic addresses. The (2) once CDR records are gone, switching records 8 CDRs reveal identification codes for the will also be gone. (Scott Decl., Ex. AA, Snyder 9 actual geographic locations of these Depo., 70: 7-12; 73:25-74:3.) Mr. Snyder further 10 network elements and provide the admitted that the majority of the information 11 geographic cellular area from where the relevant to ascertaining the class would not be 12 call originated. Thus, CDRs for particular available. (Scott Decl., Ex. AA, Snyder Depo., 13 cellular telephone numbers can provide 95:15-23.) 14 information revealing whether the calling **B. Irrelevant. Fed. R. Evid. 402.** Mr. Snyder's 15 party was within the boundaries of declaration and subsequent deposition testimony 16 California or not when the cellular call make clear that he has not actually attempted to 17 was placed. In cases where the cell site perform any of the analysis he proposes, rendering 18 information is no longer available, the any and all conclusions about what could possibly 19 identification code of the switching be done here irrelevant. See, e.g., Scott Decl., 20 Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9; system is still available as it is an 21 information element included in the 33:5-17; 35:18-25. 22 standard CDRs. Thus, even when the cell 23 site information no longer is available, it 24 still is possible to determine whether a call 25 originated from within California." 26 (Para. 20, Pages 11, Lines 5-16) A. Authenticity. Fed. R. Evid. 901. 27 Exhibit B is a "leaked" document of unknown "20. Exhibit B contains the latest 28 EAST\79398269.1 - 10 -

1 MATERIAL OBJECTED TO BY **REASON FOR OBJECTION: DEFENDANT:** 2 publicly available information regarding origin. Mr. Snyder has not and cannot 3 cellular data and information that can be authenticated Exhibit B. (Scott Decl., Ex. AA, 4 obtained under subpoena from each of the Snyder Depo., 74:8-76:7.) 5 primary cellular carriers and the B. Lack of Foundation. Speculation. Fed. R. 6 Evid. 104; Fed. R. Evid. 602. Mr. Snyder corresponding data retention periods for 7 each of those carriers. Although this admitted during his deposition that Exhibit B is a 8 information is dated March, 2011, I have "leaked" document of unknown origin. (Scott 9 no reason to believe that this information Decl., Ex. AA, Snyder Depo., 74:8-76:7.) 10 it is not still reliable and accurate. In Mr. Snyder also admitted that he has not done any 11 addition, Exhibit C describes the cellular investigation into the veracity of the claims made in 12 call detail information available from Exhibit B. (*Id*.) 13 C. Irrelevant. Fed. R. Evid. 402. Because Sprint Corporation; Exhibit D describes 14 the cellular call detail information Exhibit B is a document of unknown origin and its 15 claims have not been investigated by Mr. Snyder or available from AT&T Mobility; and 16 Exhibit E describes the cellular call detail otherwise independently verified, it is also 17 information available from Verizon irrelevant. 18 Wireless. Based on my experience and 19 knowledge, I am confident that 20 comparable data and information can be 21 provided from all other cellular carriers." 22 (Para. 21, Page 11, Lines 18-19) A. Lacks Qualifications. Fed. R. Evid. 702. 23 "21. The process to ascertain and Mr. Snyder lacks the requisite qualifications to 24 identify proposed class members solely render the opinions proffered. Mr. Snyder, 25 from their cellular telephone numbers is a although a self-admitted "professional expert 26 straightforward and highly effective witness," (Scott Decl., Ex. AA, Snyder Depo., 27 administrative process." 63:4-11), is not an expert in anything other than 28 EAST\79398269.1 - 11 -

MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
	distinguishing landlines from cellular phones.
	Mr. Snyder admitted during his deposition that his
	experience lies in TCPA cases, not call recording
	cases, (Scott Decl., Ex. AA, Snyder Depo., 56:19-
	57:4), nor has Mr. Snyder actually ever opined or
	analyzed any of the factors relevant to ascertaining
	the class in <i>this case</i> , specifically, (1) identifying
	individuals (i.e., names/addresses) solely based on
	their phone number, (Scott Decl., Ex. AA, Snyder
	Depo., 14:1-18; 46:7-22; 108:15-109:17);
	(2) determine an individual's residency based
	solely on their phone number, (Scott Decl., Ex. AA,
	Snyder Depo., 21:1-8), (3) determine an
	individual's location at the time of a call based on
	two- and three-year old telephone records, (Scott
	Decl., Ex. AA, Snyder Depo., 26:1-4; 65:4-66:2);
	(4) determine whether a call was routed to call
	centers operated by Six Continents, (Scott Decl.,
	Ex. AA, Snyder Depo., 28:4-29:9; 32: 11-22);
	(5) determine whether a call was recorded "without
	notice," (Scott Decl., Ex. AA, Snyder Depo., 33:3-
	17; 47:9-48:6); and (6) determine whether an
	individual called Six Continents using a cordless
	phone, (Scott Decl., Ex. AA, Snyder Depo., 35:18-
	36:4; 95:24-96:4). See Kumho Tire Co. v.
	Carmichael, 526 U.S. 137, 149 (1999) (stating than
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1	MATERIAL OBJECTED TO BY	REASON FOR OBJECTION:
2	DEFENDANT:	
3		an expert must have "a reliable basis in the
4		knowledge and experience of the <i>relevant</i>
5		discipline") (emphasis added); Heisler v. Maxtor
6		Corp., No. 5:06-cv-06634, 2011 WL 1496114, at
7		*9 (N.D. Cal. Apr. 11, 2011) (finding that plaintiffs
8		did not meet their burden of showing their expert
9		was qualified under Rule 702 because the proffered
10		expert did not have the requisite experience in, and
11		knowledge of, the relevant field.)
12		B. Lack of Foundation. Speculation. Fed. R.
13		Evid. 104; Fed. R. Evid. 602. Mr. Snyder's
14		opinion that "[t]he process to ascertain and identify
15		proposed class members solely from their cellular
16		telephone numbers is a straightforward and highly
17		effective administrative process" lacks foundation
18		and is complete speculation as Mr. Snyder admitted
19		during his deposition that he had never even seen
20		the proposed Class definition before jumping to this
21		<u>baseless conclusion.</u> (Scott Decl., Ex. AA, Snyder
22		Depo., 6:9-18.) This opinion further lacks
23		foundation as Mr. Snyder has never attempted to or
24		previously done any analysis to determine whether
25		the proposed Class definition in this case is
26		ascertainable. See, e.g., Scott Decl., Ex. AA,
27		Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9; 33:5-17;
28		35:18-25.
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MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
	C. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
	declaration and subsequent deposition testimony
	make clear that he has not actually attempted to
	perform any of the analysis he proposes, rendering
	any and all conclusions about what could possibly
	be done here irrelevant. See, e.g., Scott Decl.,
	Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
	33:5-17; 35:18-25.
	D. Improper Legal Conclusion. Improper
	Opinion/Argument. Fed. R. Evid. 702; Fed. R.
	Evid. 703. Mr. Snyder's opinion that the proposed
	Class in this case is "ascertainable" is an improper
	legal conclusion. McPhail v. First Command Fin.
	Planning, Inc., 247 F.R.D. 598, 604-05 (S.D. Cal.
	2007) ("Where an expert report amounts to written
	advocacy akin to a supplemental brief, a motion to
	strike is appropriate because this evidence is not
	useful for class certification purposes") (citing
	Fisher v. Ciba Specialty Chems. Corp., 238 F.R.D.
	273, 281 (S.D. Ala. 2006)); First Am. Corp. ERISA
	Litig., No. SACV 07-01357, 2009 WL 928294, at
	*1 (C.D. Cal. Apr. 2, 2009) (same).
(Para. 22, Page 11 Line 20 -	A. Authenticity. Fed. R. Evid. 901.
Page 12 Line 2)	Exhibit B is a "leaked" document of unknown
"22. Cellular carriers maintain bill	origin. Mr. Snyder has not and cannot
copies, payment histories and subscriber EAST\79398269.1	authenticated Exhibit B. (Scott Decl., Ex. AA,

1 MATERIAL OBJECTED TO BY **REASON FOR OBJECTION: DEFENDANT:** 2 identifying information including the Snyder Depo., 74:8-76:7.) 3 subscriber's name and address and the B. Lack of Foundation. Speculation. Fed. R. 4 time period when the subscriber had a Evid. 104; Fed. R. Evid. 602. Mr. Snyder 5 particular cellular telephone number in admitted during his deposition that Exhibit B is a 6 service (see Exhibit B). The primary "leaked" document of unknown origin. (Scott 7 carriers maintain this data for at least three Decl., Ex. AA, Snyder Depo., 74:8-76:7.) 8 to five years. All of this detailed and Mr. Snyder also admitted that he has not done any 9 recorded information for each subscriber investigation into the veracity of the claims made in 10 can be obtained via subpoena using only Exhibit B. (*Id.*) Any opinions or assertions based 11 the cellular telephone number as the upon Exhibit B lack foundation and are pure 12 unique identifying piece of data required speculation on Mr. Snyder's part. 13 for a detailed subscriber search." C. Irrelevant. Fed. R. Evid. 402. Because 14 Exhibit B is a document of unknown origin and its 15 claims have not been investigated by Mr. Snyder or 16 otherwise independently verified, any opinions or 17 assertions based on Exhibit B are also irrelevant. 18 (Para. 23, Page 12, Lines 3-17) A. Lack of Foundation. Speculation. Fed. R. 19 "23. In cases where subscriber Evid. 104; Fed. R. Evid. 602. Mr. Snyder 20 identifying information is no longer admitted during his deposition that he has never 21 maintained by a particular cellular carrier, used any "available third-party information service 22 there are commercially available thirdcompany" to obtain subscriber address information. 23 party information service companies that (Scott Decl., Ex. AA, Snyder Depo., 107:10-24 collect and maintain subscriber data either 109:15.) Nor has Mr. Snyder confirmed whether 25 on behalf of the cellular carriers or for any of these companies actually have such 26 various other commercial services. These information. (*Id.*) 27 companies maintain comprehensive and **B. Irrelevant. Fed. R. Evid. 402.** Mr. Snyder's 28 EAST\79398269.1 - 15 -

1 MATERIAL OBJECTED TO BY **REASON FOR OBJECTION: DEFENDANT:** 2 extensive databases that identify declaration and subsequent deposition testimony 3 subscribers based solely on their cellular make clear that he has not actually attempted to 4 telephone numbers and maintain this data perform any of the analysis he proposes, rendering 5 over several years. These companies any and all conclusions about what could possibly 6 include the previously mentioned Neustar, be done here irrelevant. See, e.g., Scott Decl., 7 A.B. Data, Ltd., CompliancePoint and Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9; 8 Contact Center Compliance, all well-33:5-17; 35:18-25. 9 known organizations that maintain 10 extensive demographic databases 11 containing cellular telephone subscription 12 information and associated identifying 13 data. These databases are updated on a 14 daily basis to ensure that both past and 15 present cellular subscriber data is always 16 reliable and preserved. I have been 17 involved in contracting with these 18 organizations to provide such cellular 19 subscriber and identifying data in many 20 class action lawsuits." 21 (Para. 24, Page 12, Lines 16-22) A. Lack of Foundation. Speculation. Fed. R. 22 Evid. 104; Fed. R. Evid. 602. Mr. Snyder "24. Each of the cellular carriers can be 23 subpoenaed or one of the appropriate admitted during his deposition that he has never 24 third-party information service companies used any "available third-party information service 25 can be contracted to produce subscriber company" to obtain subscriber address information. 26 27 identifying information for the date an (Scott Decl., Ex. AA, Snyder Depo., 107:10alleged call violation occurred. That 109:15.) Nor has Mr. Snyder confirmed whether 28 EAST\79398269.1 - 16 -

1 2	MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
3	information can include name, address	any of these companies actually have such
4	and other information, and be retrieved	information. (Id.) Nor has he ever subpoenaed
5	based solely on the provided cellular	information from cellular carriers. (Scott Decl.,
6	telephone number representing a	Ex. AA, Snyder Depo., 65:4-66:2.)
7	particular subscriber."	B. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
8		declaration and subsequent deposition testimony
9		make clear that he has not actually attempted to
10		perform any of the analysis he proposes, rendering
11		any and all conclusions about what could possibly
12		be done here irrelevant. See, e.g., Scott Decl.,
13		Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
14		33:5-17; 35:18-25.
15	(Para. 25, Page 13 Lines 7-10)	A. Lacks Qualifications. Fed. R. Evid. 702.
13		
16	"25. Furthermore, it is my expert	Mr. Snyder lacks the requisite qualifications to
	"25. Furthermore, it is my expert opinion that call detail record information	Mr. Snyder lacks the requisite qualifications to render the opinions proffered. Mr. Snyder,
16	, .	
16 17	opinion that call detail record information	render the opinions proffered. Mr. Snyder,
16 17 18	opinion that call detail record information can be obtained that reveals whether a	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert
16 17 18 19	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo.,
16 17 18 19 20	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within California at the time an alleged call was	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than
16 17 18 19 20 21	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within California at the time an alleged call was	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones.
16 17 18 19 20 21	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within California at the time an alleged call was	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones.  Mr. Snyder admitted during his deposition that his
16 17 18 19 20 21 22 23	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within California at the time an alleged call was	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones.  Mr. Snyder admitted during his deposition that his experience lies in TCPA cases, not call recording
16 17 18 19 20 21 22 23 24 25	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within California at the time an alleged call was	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones.  Mr. Snyder admitted during his deposition that his experience lies in TCPA cases, not call recording cases, (Scott Decl., Ex. AA, Snyder Depo., 56:19-
16 17 18 19 20 21 22 23 24	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within California at the time an alleged call was	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones.  Mr. Snyder admitted during his deposition that his experience lies in TCPA cases, not call recording cases, (Scott Decl., Ex. AA, Snyder Depo., 56:19-57:4), nor has Mr. Snyder actually ever opined or
16 17 18 19 20 21 22 23 24 25 26	opinion that call detail record information can be obtained that reveals whether a proposed member of the class was within California at the time an alleged call was	render the opinions proffered. Mr. Snyder, although a self-admitted "professional expert witness," (Scott Decl., Ex. AA, Snyder Depo., 63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones.  Mr. Snyder admitted during his deposition that his experience lies in TCPA cases, not call recording cases, (Scott Decl., Ex. AA, Snyder Depo., 56:19-57:4), nor has Mr. Snyder actually ever opined or analyzed any of the factors relevant to ascertaining

MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
	their phone number, (Scott Decl., Ex. AA, Snyder
	Depo., 14:1-18; 46:7-22; 108:15-109:17);
	(2) determine an individual's residency based
	solely on their phone number, (Scott Decl., Ex. AA,
	Snyder Depo., 21:1-8), (3) determine an
	individual's location at the time of a call based on
	two- and three-year old telephone records, (Scott
	Decl., Ex. AA, Snyder Depo., 26:1-4; 65:4-66:2);
	(4) determine whether a call was routed to call
	centers operated by Six Continents, (Scott Decl.,
	Ex. AA, Snyder Depo., 28:4-29:9; 32: 11-22);
	(5) determine whether a call was recorded "without
	notice," (Scott Decl., Ex. AA, Snyder Depo., 33:3-
	17; 47:9-48:6); and (6) determine whether an
	individual called Six Continents using a cordless
	phone, (Scott Decl., Ex. AA, Snyder Depo., 35:18-
	36:4; 95:24-96:4). See Kumho Tire Co. v.
	Carmichael, 526 U.S. 137, 149 (1999) (stating than
	an expert must have "a reliable basis in the
	knowledge and experience of the relevant
	discipline") (emphasis added); Heisler v. Maxtor
	Corp., No. 5:06-cv-06634, 2011 WL 1496114, at
	*9 (N.D. Cal. Apr. 11, 2011) (finding that plaintiffs
	did not meet their burden of showing their expert
	was qualified under Rule 702 because the proffered
	expert did not have the requisite experience in, and
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1 2	MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
3		knowledge of, the relevant field.)
4		B. Lack of Foundation. Speculation. Fed. R.
5		Evid. 104; Fed. R. Evid. 602. Mr. Snyder's
6		opinion that he can determine, from CDRs, the
7		location of a putative Class member at the time of
8		his or her call to Six Continents is pure speculation
9		as Mr. Snyder has never attempted to or previously
10		done any such type of analysis, (Scott Decl.,
11		Ex. AA, Snyder Depo., 26:1-4), and his opinions
12		that this can be done here are solely based on an
13		document of unknown origin and veracity from
14		four years ago that Mr. Snyder has never taken the
15		time to verify. ( <i>Id.</i> , Snyder Depo., 74:4-76:7.)
16		C. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
17		declaration and subsequent deposition testimony
18		make clear that he has not actually attempted to
19		perform any of the analysis he proposes, rendering
20		any and all conclusions about what could possibly
21		be done here irrelevant. See, e.g., Scott Decl.,
22		Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
23		33:5-17; 35:18-25.
24	(Para. 26, Pages 13, Lines 10-15)	A. Lacks Qualifications. Fed. R. Evid. 702.
25	"26. Based on my education,	Mr. Snyder lacks the requisite qualifications to
26	knowledge, experience, expertise and	render the opinions proffered. Mr. Snyder,
27	training, it is my expert opinion that the	although a self-admitted "professional expert
28	proposed members of the class in this case	witness," (Scott Decl., Ex. AA, Snyder Depo.,
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### 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

# MATERIAL OBJECTED TO BY DEFENDANT:

can be definitively and clearly ascertained based solely on their cellular telephone numbers. The process to identify these proposed class members from their cellular telephone numbers is a straightforward and highly accurate administrative process."

### **REASON FOR OBJECTION:**

63:4-11), is not an expert in anything other than distinguishing landlines from cellular phones. Mr. Snyder admitted during his deposition that his experience lies in TCPA cases, not call recording cases, (Scott Decl., Ex. AA, Snyder Depo., 56:19-57:4), nor has Mr. Snyder actually ever opined or analyzed any of the factors relevant to ascertaining the class in *this case*, specifically, (1) identifying individuals (i.e., names/addresses) solely based on their phone number, (Scott Decl., Ex. AA, Snyder Depo., 14:1-18; 46:7-22; 108:15-109:17); (2) determine an individual's residency based solely on their phone number, (Scott Decl., Ex. AA, Snyder Depo., 21:1-8), (3) determine an individual's location at the time of a call based on two- and three-year old telephone records, (Scott Decl., Ex. AA, Snyder Depo., 26:1-4; 65:4-66:2); (4) determine whether a call was routed to call centers operated by Six Continents, (Scott Decl., Ex. AA, Snyder Depo., 28:4-29:9; 32: 11-22); (5) determine whether a call was recorded "without notice," (Scott Decl., Ex. AA, Snyder Depo., 33:3-17; 47:9-48:6); and (6) determine whether an individual called Six Continents using a cordless phone, (Scott Decl., Ex. AA, Snyder Depo., 35:18-36:4; 95:24-96:4). See Kumho Tire Co. v.

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1	MATERIAL OBJECTED TO BY	
2	DEFENDANT:	REASON FOR OBJECTION:
3		Carmichael, 526 U.S. 137, 149 (1999) (stating than
4		an expert must have "a reliable basis in the
5		knowledge and experience of the <i>relevant</i>
6		discipline") (emphasis added); Heisler v. Maxtor
7		Corp., No. 5:06-cv-06634, 2011 WL 1496114, at
8		*9 (N.D. Cal. Apr. 11, 2011) (finding that plaintiffs
9		did not meet their burden of showing their expert
10		was qualified under Rule 702 because the proffered
11		expert did not have the requisite experience in, and
12		knowledge of, the relevant field.)
13		B. Lack of Foundation. Speculation. Fed. R.
14		<b>Evid. 104; Fed. R. Evid. 602.</b> Mr. Snyder's
15		opinion "that the proposed members of the class in
16		this case can be definitively and clearly ascertained
17		based solely on their telephone numbers" lacks
18		foundation and is complete speculation as
19		Mr. Snyder admitted during his deposition that he
20		had never even seen the proposed Class definition
21		before jumping to this baseless conclusion. (Scott
22		Decl., Ex. AA, Snyder Depo., 6:9-18.) This
23		opinion further lacks foundation as Mr. Snyder has
24		never attempted to or previously done any analysis
25		to determine whether the proposed Class definition
26		in this case is ascertainable. See, e.g., Scott Decl.,
27		Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
28		33:5-17; 35:18-25.
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MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
	C. Irrelevant. Fed. R. Evid. 402. Mr. Snyder's
	declaration and subsequent deposition testimony
	make clear that he has not actually attempted to
	perform any of the analysis he proposes, rendering
	any and all conclusions about what could possibly
	be done here irrelevant. See, e.g., Scott Decl.,
	Ex. AA, Snyder Depo., 21:1-3; 26:1-4; 28:4-29:9;
	33:5-17; 35:18-25.
	D. Improper Legal Conclusion. Improper
	Opinion/Argument. Fed. R. Evid. 702; Fed. R.
	<b>Evid. 703.</b> Mr. Snyder's opinion that the propose
	Class in this case is "ascertainable" is an improper
	legal conclusion. McPhail v. First Command Fin
	Planning, Inc., 247 F.R.D. 598, 604-05 (S.D. Cal.
	2007) ("Where an expert report amounts to written
	advocacy akin to a supplemental brief, a motion to
	strike is appropriate because this evidence is not
	useful for class certification purposes") (citing
	Fisher v. Ciba Specialty Chems. Corp., 238 F.R.D.
	273, 281 (S.D. Ala. 2006)); First Am. Corp. ERIS.
	Litig., No. SACV 07-01357, 2009 WL 928294, at
	*1 (C.D. Cal. Apr. 2, 2009) (same).
Exhibit B: "Retention Periods Of Major	A. Authenticity. Fed. R. Evid. 901.
Cellular Providers"	Exhibit B is a "leaked" document of unknown
	origin. Mr. Snyder has not and cannot
	authenticated Exhibit B. (Scott Decl., Ex. AA,

MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
	Snyder Depo., 74:8-76:7.)
	B. Lack of Foundation. Speculation. Fed. R.
	Evid. 104; Fed. R. Evid. 602. Mr. Snyder
	admitted during his deposition that Exhibit B is a
	"leaked" document of unknown origin. (Scott
	Decl., Ex. AA, Snyder Depo., 74:8-76:7.)
	Mr. Snyder also admitted that he has not done any
	investigation into the veracity of the claims made
	Exhibit B. (Id.) Any opinions or assertions based
	upon Exhibit B lack foundation and are pure
	speculation on Mr. Snyder's part.
	C. Irrelevant. Fed. R. Evid. 402. Because
	Exhibit B is a document of unknown origin and its
	claims have not been investigated by Mr. Snyder of
	otherwise independently verified, any opinions or
	assertions based on Exhibit B are also irrelevant.
Exhibit C: "Subpoena Compliance"	A. Authenticity. Fed. R. Evid. 901.
	Mr. Snyder does not and cannot authenticate this
	document.
	B. Lack of Foundation. Speculation. Fed. R.
	Evid. 104; Fed. R. Evid. 602.
	Mr. Snyder fails to establish the requisite
	foundation for this document.
	C. Irrelevant. Fed. R. Evid. 402.
	Because Exhibit C lacks authenticity and
	foundation, it is also irrelevant.

MATERIAL OBJECTED TO BY DEFENDANT:	REASON FOR OBJECTION:
Exhibit D: "Legend for AT&T Mobility	A. Authenticity. Fed. R. Evid. 901.
Records Labeled 'Data Source: SCAMP'"	Mr. Snyder does not and cannot authenticate this
	document.
	B. Lack of Foundation. Speculation. Fed. R.
	Evid. 104; Fed. R. Evid. 602.
	Mr. Snyder fails to establish the requisite
	foundation for this document.
	C. Irrelevant. Fed. R. Evid. 402.
	Because Exhibit D lacks authenticity and
	foundation, it is also irrelevant.
Exhibit E: "Explanation Form For Calls	A. Authenticity. Fed. R. Evid. 901.
With Cellsites"	Mr. Snyder does not and cannot authenticate this
	document.
	B. Lack of Foundation. Speculation. Fed. R.
	Evid. 104; Fed. R. Evid. 602.
	Mr. Snyder fails to establish the requisite
	foundation for this document.
	C. Irrelevant. Fed. R. Evid. 402.
	Because Exhibit E lacks authenticity and
	foundation, it is also irrelevant.
Dated: August 5, 2013	DLA PIPER LLP (US)
	By /s/ Monica D. Scott
	PERRIE M. WEINER EDWARD D. TOTINO
	MONICA D. SCOTT Attorneys for Defendant
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DLA PIPER LLP (US)
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